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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DONNA RANTON-RIED, *guardian*
ad litem for minor C. K.,

07-CV-0383-PK

Plaintiff,

ORDER

v.

DANIEL ALCAZAR; ACADEMY OF
ALTERNATIVES, INC.; OREGON
DEPARTMENT OF EDUCATION; and
GRESHAM-BARLOW SCHOOL
DISTRICT,

Defendants.

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BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#12) on July 13, 2007, in which he recommended this Court grant Defendant Oregon Department of Education's Motion to Dismiss (#8). The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed, this Court is relieved of its obligation to review the record *de novo*. *Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). See also *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8th Cir. 1983).

The Court notes the Magistrate Judge correctly applied the principle that "a state agency is not a 'person' within the meaning of § 1983 and cannot be subject to suit under § 1983." See *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70-71 (1989). The Court also agrees even though the Oregon Tort Claims Act waives the state's immunity (and, therefore, an agency's immunity) to suit in state court, "it is not a waiver of Eleventh Amendment immunity" to suit in federal court. See *Estate of Pond v. Oregon*, 322 F. Supp. 2d 1161, 1165 (D. Or. 1999). See also *Ctr. for Legal Studies v. Lindley*, 64 F. Supp. 2d 970, 976 (D. Or. 1999).

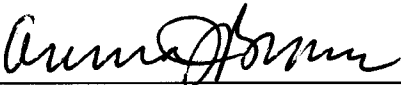
Having reviewed all of the legal principles *de novo*, the Court does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#12). Accordingly, the Court **GRANTS** Oregon Department of Education's Motion to Dismiss (#8) and **DISMISSES** Plaintiff's claims against the Oregon Department of Education **with prejudice**.

IT IS SO ORDERED.

DATED this 6th day of September, 2007.



ANNA J. BROWN
United States District Judge